IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 775 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAYABEN H SHAH

Versus

STATE OF GUJARAT

Appearance:

MR MAULIN SHELAT for MR KV SHELAT for Petitioner

MR PREMAL JOSHI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 17/11/2000

ORAL JUDGEMENT

The petitioner challenges the order of the Urban Land Ceiling Tribunal dated 28.1.1987, passed in Appeal No. 153 of 1986, dismissing the appeal of the petitioner on the ground that it was filed much beyond the period of limitation and the delay of three years in the filing of

the appeal was not explained.

2. The learned Counsel for the petitioner strongly contended that the procedure prescribed under Section 8 which required a notice of the draft statement to be served on the petitioner was not followed and since the petitioner was not given an opportunity to state his objections to such statement as contemplated by Section 8(3) of the Act, the further proceedings under Sections 9 and 10 of making a final statement and acquisition of the vacant land, which was in excess of the limit, would fall to ground. The learned Counsel relied upon the decision of this Court in Saburbhai Hemabhai Chauhan Vs. State of Gujarat, reported in 2000 (1) GLH 580, in which it was held, in context of a sale transaction found to be void, and the provisions of Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948, that any sale deed which was void-ab-initio cannot be legalised simply because delayed action was taken.

3. It has been pointed out in the affidavit-in-reply filed by the competent authority on 27.12.1999 that the competent authority had passed the order declaring excess land of 241.74 sq.mtrs. by order dated 30th August, 1983, against which the petitioner had preferred an appeal, which came to be rejected on 28th January, 1987 by the Tribunal. It is stated that as per the record, further proceedings had taken place and a Notification under Section 10(3) of the Urban Land Ceiling Act was issued on 6.1.1984 and published on 9.2.1984 and the land in question vested in the State Government as contemplated by the provisions of Section 10(3) of the Act. It is also stated that notice under Section 10(5) of the Act was issued on 15.5.1984, which was duly served on the petitioner and thereafter, possession of the land in question was taken over on 17.2.1987 in presence of the panchas. It will thus be clear that the land in question has finally vested in the State Government. The Notification that has been issued under Section 10 of the Act has not been challenged.

4. Under Section 33 of the said Act, any person aggrieved by an order made by the competent authority under the Act, other than an order under Section 11 or 30(1) thereof, may, within 30 days of the date on which the order is communicated to him, prefer an appeal to the appellate authority, provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. In the present case, the

appeal was preferred nearly three years after the order was made by the competent authority. The appellate authority has in terms observed that no sufficient cause was made out for condonation of such gross delay. The final statement was served on the petitioner on 1.9.1983 and the appellant did not show any cause, much less any sufficient cause, for condonation of delay. The appellate authority was perfectly within its jurisdiction in not entertaining the appeal when no sufficient cause was made out to its satisfaction for condonation of the gross delay in the filing of the appeal. The appellate order is in consonance with the proviso to Section 33(1) of the Act, which implies that the appellate authority is not bound to consider an appeal which is time barred and where no sufficient cause is made out for the delay in filing of the appeal. The contention that since no hearing was given as the draft statement was not duly served on the petitioner as contemplated by Section 8(3) of the Act and therefore, the appellate authority ought to have treated the final statement as non-est since the principles of natural justice were not observed, is misconceived because for the purpose of examining whether the order is void or not, the appellate authority had to invoke its appellate jurisdiction under Section 33, which could be exercised only when the appeal is filed within the time prescribed or when delay is condoned for sufficient cause. It is clear that the appellate authority has acted in lawful exercise of its jurisdiction by not entertaining the appeal on the ground that the gross delay in the filing of the appeal was not explained. Since the appeal was time barred, there was no question of going into the validity of the order of the competent authority and treating it as void ab-initio in exercise of the appellate powers, which could not have been exercised since the appeal was time barred. This petition is therefore rejected. Rule is discharged with no order as to costs.

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